

LAF1ZULP

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 Cr. 160 (MKV)

5 MARCOS ZULUETA,

6 Defendant.

Remote Plea

7
8 October 15, 2021
10:18 a.m.

9 Before:

10 HON. MARY KAY VYSKOCIL,

11 District Judge

12
13 APPEARANCES

14 A. DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

15 BY: SARAH MORTAZAVI, ESQ.

16 Assistant United States Attorney

17 ROBERT E. GOLDMAN LLC

Attorneys for Defendant

18 BY: ROBERT E. GOLDMAN, ESQ.

19 ALSO PRESENT: CRISTINA WEISZ, Standby Interpreter (Spanish)

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1 (Case called)

2 THE DEPUTY CLERK: Good morning, your Honor.

3 THE COURT: Good morning, Ms. Dempsey.

4 THE DEPUTY CLERK: Counsel, starting with the
5 government, please state your names for the record.

6 MS. MORTAZAVI: Good morning, your Honor. This is
7 Sarah Mortazavi for the government.

8 THE COURT: Good morning, Ms. Mortazavi.

9 MR. GOLDMAN: Good morning, your Honor. Robert
10 Goldman on behalf of Mr. Zulueta.

11 THE COURT: All right. Good morning, Mr. Goldman.
12 And is Mr. Zulueta with you?

13 MR. GOLDMAN: Yes, your Honor, right next to me, if
14 you can see him on the screen. We had some problems with our
15 computer, so --

16 THE COURT: I know. I've been waiting.

17 MR. GOLDMAN: I know. I've never had it happen, your
18 Honor. Sorry.

19 THE COURT: All right. I can see you but I cannot see
20 Mr. Zulueta.

21 Good morning, Mr. Zulueta.

22 THE DEFENDANT: Good morning, your Honor.

23 THE COURT: All right. So we're here today for a
24 change of plea hearing in this matter. I'm told that
25 Mr. Zulueta wishes to plead guilty. Do I understand, though,

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1 Mr. Zulueta, that you need the services of an interpreter?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: All right. And we do have an interpreter
4 with us, correct, Ms. Weisz?

5 THE DEFENDANT: (In English) Yes, your Honor.

6 THE INTERPRETER: Yes, your Honor.

7 THE COURT: All right. Good morning, Ms. Weisz.
8 Thank you for being with us.

9 THE INTERPRETER: My pleasure, your Honor.

10 THE COURT: Thank you.

11 So counsel is appearing before me today by
12 videoconference, as is the defendant. Let me just confirm with
13 everyone that you can hear me clearly and hear and see one
14 another clearly.

15 Ms. Mortazavi?

16 MS. MORTAZAVI: Yes, your Honor. I can see and hear
17 all the parties clearly.

18 THE COURT: Okay. Thank you.

19 Mr. Goldman.

20 MR. GOLDMAN: Yes, your Honor. We can also.

21 THE COURT: All right. And Mr. Zulueta, can you see
22 and hear --

23 THE DEFENDANT: (In English) Yes.

24 THE COURT: -- me and the counsel for the government
25 clearly?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: All right. Mr. Zulueta, most importantly
3 you, if at any time you cannot hear or see any of the
4 participants or if you do not understand me clearly, please
5 stop me and either I'll try to explain to you more clearly or I
6 will give you an opportunity to speak with Mr. Goldman. Will
7 you do that, please?

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: All right. And if at any point, for any
10 reason, you wish to speak with your lawyer, Mr. Goldman, just
11 let me know that and we will arrange for you to speak in
12 private.

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: All right. So we remain subject to
15 restrictions, obviously, as a result of COVID-19, and I am
16 therefore conducting this proceeding remotely pursuant to the
17 authority provided by Section 15002 of the CARES Act, and by
18 standing orders issued by our Chief Judge pursuant to that act.

19 Can each of you mute your lines if you're not
20 addressing the Court, because I'm getting feedback. Thank you.

21 All right. The CARES Act provides that the Court may
22 conduct a felony plea proceeding by videoconference when the
23 Chief Judge of the district orders that proceedings cannot be
24 conducted in person without seriously jeopardizing public
25 health and safety, and when the district judge in a particular

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1 case -- here, that is me -- finds for specific reasons that the
2 plea hearing in that case cannot be further delayed without
3 serious harm to the interests of justice. By standing order
4 dated September 15, 2021, Chief Judge Laura Taylor Swain found
5 that felony pleas cannot be conducted in person without
6 seriously jeopardizing public health.

7 Prior to today's hearing, I received from the
8 government an application supported by an affirmation, I
9 believe of you, Ms. Mortazavi, but it may have been Mr. Adams.
10 Let me just check.

11 MS. MORTAZAVI: I believe I submitted the unsealed
12 affirmation, your Honor.

13 THE COURT: Okay. That's what I thought, that there
14 had been a change. All right. Thank you.

15 So as I say, I received an application supported by an
16 affirmation of Ms. Mortazavi and a proposed order asking that
17 the plea proceeding for Mr. Zulueta not be delayed and that we
18 proceed remotely. I'll get in a moment to the consents that
19 I've received and the waiver of personal presence that I
20 received from Mr. Zulueta. That application tells me that the
21 defendant consents to proceeding and not delaying today's plea
22 proceeding. It tells me that your interest, Mr. Zulueta, in
23 expeditiously resolving the charges against you while avoiding
24 the risks related to the COVID-19 pandemic, particularly given
25 the fact that this case has been pending for over 18 months,

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1 constitutes specific reasons that the proceedings should not be
2 delayed.

3 The Court does also find that the interests of
4 judicial economy and avoiding the backlog that would result in
5 cases in the federal system if we did not proceed is a further
6 specific reason justifying not delaying this proceeding.

7 Mr. Goldman, let me ask you, do you have any
8 additional reasons that you wish to put on the record in
9 support of not delaying the proceeding? And do you in fact
10 consent to proceeding today?

11 Now you have to unmute, sir.

12 MR. GOLDMAN: I'm sorry. Your Honor, I have nothing
13 else to add, and we've discussed it, and we certainly consent
14 to these proceedings being conducted in this fashion.

15 THE COURT: All right. We're not talking about in
16 this fashion right now; we're talking about whether we should
17 delay and wait until we can do the proceeding in person.
18 That's the first issue we're dealing with.

19 MR. GOLDMAN: No, we should not delay.

20 THE COURT: All right. The Court does find, for the
21 reasons set forth in the application by the government, that
22 this proceeding cannot and should not be delayed without
23 substantial harm to the interests of justice.

24 Now in terms of the manner of how we're proceeding, I
25 received, in advance of today's hearing, two documents. The

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1 first is a waiver of Mr. Zulueta's right to appear before me in
2 open court for entry of a plea, and the second is a consent to
3 proceed by videoconference with today's plea proceeding.

4 Mr. Goldman, would you for the record please describe
5 to me how you provided these documents to Mr. Zulueta. Did you
6 explain to him that he has a right to appear before me in open
7 court for today's proceeding? Do you believe, based on your
8 conversation with him, that he understood his right to appear
9 before me in open court, and that he is voluntarily and
10 willingly giving up that right? When you met with him --

11 MR. GOLDMAN: Yes, your Honor.

12 THE COURT: Hold on. -- did you require the services
13 of an interpreter? And how did you obtain his signature on
14 these documents?

15 Mr. Zulueta, I'm going to ask you some questions after
16 I hear from Mr. Goldman, so please listen carefully to his
17 responses.

18 MR. GOLDMAN: Yes, your Honor.

19 First, your Honor, I first forwarded it via email to
20 my client and discussed it with him remotely. Mr. Zulueta and
21 I can communicate in English. We had the translator services
22 today because there will be some legal terms here, etc., and to
23 avoid any difficulty with those issues, that's why we requested
24 the translator to be available. Also, I obtained his
25 signature, which then was sent back to me, which I forwarded on

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1 to the prosecutors. My client has been here for about an hour
2 and a half before these proceedings. We then went over this
3 document again in person. He totally understands his rights.
4 He waives his right to be present before this Court, and I have
5 no doubt that he understands what he's agreed to and requested.

6 THE COURT: All right. Thank you, Mr. Goldman.

7 Is that your signature, Mr. Goldman, on the waiver of
8 the right to be present at a criminal proceeding?

9 MR. GOLDMAN: It is, your Honor.

10 THE COURT: And is that your signature on the Consent
11 to Proceed by Videoconference?

12 MR. GOLDMAN: It is, your Honor.

13 THE COURT: And did you make the change or approve the
14 change striking the word "misdemeanor" plea and inserting that
15 this is in fact a felony plea?

16 MR. GOLDMAN: Yes, your Honor. That was prepared by
17 the AUSA, and --

18 THE COURT: Yes.

19 MR. GOLDMAN: -- it's always been our understanding
20 that we're pleading to a felony.

21 THE COURT: All right. That's what I wanted to
22 confirm.

23 All right. Mr. Zulueta, do you have a copy of these
24 forms in front of you?

25 THE DEFENDANT: (In English) Yes, your Honor.

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1 THE COURT: All right. I want to confirm, is that
2 your signature on the Waiver of the Right to be Present at a
3 Criminal Proceeding, the first page?

4 THE DEFENDANT: (In English) Yes, your Honor.

5 THE COURT: And do you understand that you do have a
6 right to appear before me in open court, where I am right now,
7 to enter your plea in this case?

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: Did you read this form before you signed
10 it and did you discuss with your lawyer your rights and whether
11 it's in your best interest to waive those rights?

12 THE DEFENDANT: (In English) I read -- I read, I
13 discussed with my lawyer.

14 THE COURT: Okay. And do you in fact waive your right
15 to appear before me in open court and instead consent to
16 proceed today by videoconference?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: All right. Thank you.

19 And is that your signature on the second document,
20 Mr. Zulueta, that's labeled Consent to Proceed by
21 Videoconference?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: And do you understand that the charge to
24 which I'm told you wish to plead guilty is in fact a felony
25 charge, not a misdemeanor charge?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. I do find that Mr. Zulueta
3 understands his right to appear before me in open court and
4 that he has knowingly and voluntarily waived that right and
5 consents to instead proceed today by videoconference. I will
6 sign each of the Waiver of the Right to be Present at Criminal
7 Proceedings and the Consent to Proceed by Videoconference, and
8 those will be filed on the docket in this case.

9 Now as I say, I'm informed that defendant has an
10 application to withdraw his plea of not guilty which was
11 previously entered and that pursuant to an agreement with the
12 government, he intends to waive indictment and enter a plea of
13 guilty to a one-count superseding information numbered S9 in
14 Case No. 20 Cr. 160.

15 Count One of the superseding information which has
16 been provided to the Court charges the defendant with drug
17 adulteration and misbranding, in violation of Title 21 United
18 States Code Sections 331 and 333(a)(2). In particular, the
19 government alleges that from at least in or about 2019 through
20 March of 2020, Mr. Zulueta misled and deceived state and
21 federal drug regulators with respect to the distribution,
22 purchase, and receipt of various misbranded and adulterated
23 performance-enhancing drugs, and the use of such misbranded and
24 adulterated drugs to improve the performance of thoroughbred
25 racehorses under Mr. Zulueta's care and custody and under the

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1 care and custody of others.

2 Mr. Goldman, is that in fact consistent with your
3 understanding?

4 MR. GOLDMAN: It is, your Honor.

5 THE COURT: Mr. Zulueta, is that your understanding of
6 what we are doing today and the charge against you?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: All right. I have a copy of a --

9 MS. MORTAZAVI: Pardon me, your Honor.

10 THE COURT: Yes.

11 MS. MORTAZAVI: I don't mean to interrupt. I may have
12 misheard, but I thought you'd referred to the superseding
13 information as S9, and the copy I have is S10. It's signed by
14 the U.S. Attorney Damian Williams. And I just want to
15 confirm --

16 THE COURT: Yes, it is S10. Thank you very much. I
17 think that when we were preparing -- did you submit one prior
18 to the change?

19 MS. MORTAZAVI: We may have, your Honor, and we've had
20 a change in U.S. Attorney and updated the --

21 THE COURT: Yes, I understand. Thank you. Thank you
22 very much.

23 Yes, the information is numbered S10. My apologies.
24 And thank you, Ms. Mortazavi.

25 So I also have a copy of a letter dated September 23,

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2021. That has not been superseded, right, Ms. Mortazavi?

MS. MORTAZAVI: That's correct, your Honor. It's the September 23rd version.

THE COURT: Okay. All right. So it's a six-page letter on the letterhead of the United States Department of Justice, the U.S. Attorney for the Southern District of New York, addressed to Mr. Goldman, *In re United States v. Marcos Zulueta*, and it is signed by Andrew Adams, approved by Alexander Wilson. There's a line that indicates agreed and consented to by Mr. Zulueta and approved by Mr. Goldman. We'll talk about that in a moment. For now, I will simply mark this as Government Exhibit 1.

All right. Mr. Zulueta, before I accept a guilty plea from you, there are a number of questions that I need to ask you while you are under oath, and I'm doing that to assure myself that your plea is a valid plea. I may at times cover a point more than once.

Did we just lose Mr. Goldman?

THE DEFENDANT: No. We're here.

THE COURT: Okay. All right. I'm sorry.

I may at times cover a point more than one time, and I may cover certain points that were in various forms or documents that you have signed. If I do that, I'm doing so because it's very important that you understand what's happening today.

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1 If at any point you don't understand anything that I
2 ask you, I would request that you please say so and, as I said
3 before, I'll try to reword what I'm asking you or you have the
4 right to talk at any point in time with Mr. Goldman. So will
5 you please do that if you don't understand, let me know?

6 THE DEFENDANT: (In English) Yes, your Honor.

7 THE COURT: All right. Thank you.

8 Ms. Dempsey, would you please administer the oath to
9 Mr. Zulueta.

10 THE DEPUTY CLERK: Yes, your Honor.

11 Mr. Zulueta, please raise your right hand.

12 (Defendant sworn)

13 THE DEPUTY CLERK: Thank you. Please state and spell
14 your name for the record.

15 THE DEFENDANT: (In English) Marcos Zulueta.

16 M-A-R-C-O-S, Z-U-L-U-E-T-A.

17 THE COURT: All right. Thank you, Mr. Zulueta.

18 Can you tell me, sir, how old are you?

19 THE DEFENDANT: (In English) 53.

20 THE COURT: And how far did you go in school?

21 THE DEFENDANT: (In English) I finished high school in
22 Cuba.

23 THE COURT: I'm sorry. You finished high school?

24 THE DEFENDANT: (In English) Yeah, high school, in
25 Cuba; not in this country, in Cuba.

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1 THE COURT: In Cuba, are you saying?

2 THE DEFENDANT: (In English) Yes, yes.

3 THE COURT: Mr. Goldman, can you please shift the
4 camera so that -- what I'm seeing right now is the wall between
5 the two of you and half of Mr. Zulueta, so if you could shift
6 the camera. I don't really need to see you, Mr. Goldman, right
7 now. It would be great if I could. If you moved back a
8 little, I'd see both of you. But it's most important for me to
9 see Mr. Zulueta.

10 MR. GOLDMAN: Okay. Do you see him now, your Honor?

11 THE COURT: Yes, I do. And as I say, Mr. Goldman, you
12 could move back and then I would see both of you.

13 MR. GOLDMAN: Excellent idea, your Honor.

14 THE COURT: That's fine. But as I say, it's
15 Mr. Zulueta that I really need to see. Thank you.

16 MR. GOLDMAN: Yes, your Honor.

17 THE COURT: All right. Mr. Zulueta, we talked about
18 the fact that you requested the services of an interpreter
19 today. Can you tell me, though, do you speak and understand
20 English at all?

21 THE DEFENDANT: (In English) I understand most, but
22 sometimes when they use a different word, I don't understand,
23 so that's why I requested an interpreter.

24 THE COURT: No issue and no problem, sir. I just
25 wanted to put on the record the extent to which you do

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1 understand English.

2 Okay. Are you, Mr. Zulueta, a citizen of the United
3 States?

4 THE DEFENDANT: (In English) Yes, your Honor.

5 THE COURT: And were you born here or are you a
6 naturalized citizen?

7 THE DEFENDANT: (In English) I'm naturalized citizen.

8 THE COURT: Okay. Thank you.

9 Mr. Zulueta, are you now or have you recently been
10 under the care of a medical doctor?

11 THE DEFENDANT: (In English) No.

12 THE COURT: Are you now or have you recently been
13 under the care of a mental health professional? And by that I
14 mean a psychiatrist, psychologist, therapist, social worker.

15 THE DEFENDANT: (In English) No, your Honor.

16 THE COURT: Have you ever been treated or hospitalized
17 for any mental illness?

18 THE DEFENDANT: (In English) No, your Honor.

19 THE COURT: Have you ever been treated or hospitalized
20 for any type of addiction, including drugs or alcohol
21 addiction?

22 THE DEFENDANT: (In English) No, your Honor.

23 THE COURT: Have you ever been addicted to drugs or to
24 alcohol?

25 THE DEFENDANT: (In English) Addicted? No, no, your

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1 Honor.

2 THE COURT: In the past 24 hours have you taken any
3 drugs, any medication, any pills?

4 THE DEFENDANT: (In English) No, your Honor.

5 THE COURT: Have you had any alcohol to drink in the
6 past 24 hours?

7 THE DEFENDANT: (In English) No, your Honor.

8 THE COURT: Is your mind clear today?

9 THE DEFENDANT: (In English) 100 percent, your Honor.

10 THE COURT: Do you understand what we're doing?

11 THE DEFENDANT: (In English) Yes, your Honor.

12 THE COURT: Physically, do you feel well? Do you feel
13 healthy today?

14 THE DEFENDANT: (In English) Yes, your Honor.

15 THE COURT: Are you represented by counsel,
16 Mr. Zulueta? Do you have a lawyer?

17 THE DEFENDANT: (In English) Yes. Yes, your Honor.

18 THE COURT: Who is your lawyer?

19 THE DEFENDANT: (In English) Bob Goldman.

20 THE COURT: And are you satisfied with Mr. Goldman's
21 representation of you in this matter?

22 THE DEFENDANT: (In English) 100 percent.

23 THE COURT: Do either counsel have any doubt as to
24 Mr. Zulueta's competence to plead at this time? Ms. Mortazavi?

25 MS. MORTAZAVI: No doubts, your Honor.

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1 THE COURT: Mr. Goldman?

2 MR. GOLDMAN: No doubts, your Honor.

3 THE COURT: All right. Mr. Zulueta, your lawyer has
4 told me that you wish to withdraw your plea of not guilty and
5 to enter a plea of guilty to a superseding information to be
6 filed in this case. Is that what you wish to do?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: You wish to enter a plea of guilty.

9 THE DEFENDANT: (In English) Yes, your Honor.

10 THE COURT: Have you fully discussed your case with
11 Mr. Goldman, including the charge to which you intend to plead
12 guilty and any possible defenses to that charge?

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: Have you discussed with Mr. Goldman the
15 consequences of pleading guilty?

16 THE DEFENDANT: (In English) Yes, your Honor.

17 THE COURT: Are you satisfied with the advice that you
18 have received from Mr. Goldman?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: Do you have any questions about the charge
21 against you or about the consequences of entering a plea of
22 guilty?

23 THE DEFENDANT: (In English) No, your Honor.

24 THE COURT: Do you need any further time to talk to
25 Mr. Goldman before we proceed?

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1 THE DEFENDANT: (In English) No, your Honor.

2 THE COURT: All right. On the basis of Mr. Zulueta's
3 responses to my questions and my observations of his demeanor,
4 I do find that he's fully competent to enter an informed plea
5 at this time.

6 Now, Mr. Zulueta, before I get to the plea itself, I
7 want to make sure you understand the rights you would be giving
8 up by waiving indictment in this case. The document that
9 contains the charges to which you've told me you wish to plead
10 guilty is called an information. It's been issued by the
11 United States Attorney for the Southern District of New York.
12 You have a constitutional right to be charged by an indictment
13 rather than an information. An indictment is a charge issued
14 by a grand jury. Do you understand this?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: And have you discussed the difference
17 between an information and an indictment with Mr. Goldman?

18 THE DEFENDANT: (In English) Yes, your Honor.

19 THE COURT: Do you understand that if you do not waive
20 indictment and the government wants to prosecute you on the
21 facts and the charges that are in the information, it would
22 have to present that case to a grand jury, which might or might
23 not indict you on the charges?

24 THE DEFENDANT: (In English) Yes, your Honor.

25 THE COURT: Do you understand that you're under no

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1 obligation to waive indictment?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: I have a document that's been provided to
4 me that reads: "The above-named defendant," and it names you,
5 "who is accused of one count of violating Title 21 United
6 States Code Section 331 and 333 and Title 18 United States Code
7 Section 2, being advised of the nature of the charges and of
8 his rights, hereby waives, in open court and via
9 videoconference, prosecution by indictment and consents that
10 the proceeding may be by information instead of indictment."
11 Do you have a copy of this document in front of you?

12 THE DEFENDANT: (In English) Yes, your Honor.

13 THE COURT: Is that your signature on the document,
14 Mr. Zulueta?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: All right. Let me ask you, Mr. Goldman,
17 is that your signature?

18 MR. GOLDMAN: Yes, your Honor.

19 THE COURT: All right. The document is not dated.
20 When did you sign this document?

21 THE DEFENDANT: (In English) Oh.

22 MR. GOLDMAN: I think we received it the past --
23 within the past two days, your Honor. That's my recollection.

24 THE COURT: Well, did you sign it yesterday or did you
25 sign it the day before, Mr. Goldman?

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1 MR. GOLDMAN: Well, your Honor, I -- I signed it the
2 day I returned it to -- the day I returned it to the
3 prosecutor.

4 THE COURT: All right. Let me just confirm now,
5 Mr. Zulueta, do you in fact affirm what is written on this
6 document and your signature? Is it your intention today --

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: -- to hereby waive, in open court and via
9 videoconference, prosecution by indictment, and do you consent
10 that the proceeding be by information instead of indictment?

11 THE DEFENDANT: (In English) Yes, your Honor.

12 THE COURT: All right. May I insert today's date on
13 this document, Mr. Goldman?

14 MR. GOLDMAN: Yes, your Honor. Thank you.

15 THE COURT: All right. I'll date this October 15, and
16 this will be filed on the docket in this case.

17 Now, Mr. Zulueta, do you realize that by signing this
18 waiver of indictment, you've given up your right to have the
19 case presented to a grand jury?

20 THE DEFENDANT: (In English) Yes, your Honor.

21 THE COURT: Do you understand what a grand jury is?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Do you understand that a grand jury
24 consists of 23 people, at least 16 of whom must be present in
25 order to conduct business and that you cannot --

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: -- be charged unless at least 12 of those
3 people vote for indictment?

4 THE DEFENDANT: (In English) Yes, your Honor.

5 THE COURT: Did anyone make any threats or any
6 promises to you to get you to waive indictment in this case?

7 THE DEFENDANT: (In English) No, your Honor.

8 THE COURT: Have you seen a copy of the superseding
9 information that contains the charges against you?

10 THE DEFENDANT: (In English) Yes, your Honor.

11 THE COURT: Have you read this superseding
12 information?

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: Did you discuss it with your attorney,
15 Mr. Goldman?

16 THE DEFENDANT: (In English) I read, I discussed it
17 with my lawyer, yes, your Honor.

18 THE COURT: And did you discuss the charges against
19 you and any defenses to those charges?

20 THE DEFENDANT: (In English) Yes, your Honor.

21 THE COURT: Do you understand the charges against you
22 that are laid out in this information?

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: All right. I can read the superseding
25 information out loud now, if you would like me to do so, or you

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1 could waive its reading. Would you like me to read the
2 information to you or do you waive public reading?

3 THE DEFENDANT: (In English) No, your Honor. I waive
4 the reading.

5 THE COURT: You waive reading.

6 THE DEFENDANT: (In English) Yes, your Honor.

7 THE COURT: All right. I do find that Mr. Zulueta's
8 waiver of indictment in this case is knowing and voluntary. It
9 is accepted, and the superseding information will be filed in
10 this case.

11 Now, Mr. Zulueta, before I accept your plea, I want to
12 ask you some additional questions, sir. My questions are
13 intended to satisfy me that you wish to plead guilty because
14 you are in fact guilty and that you fully understand your
15 rights and the consequences of your plea.

16 I'm now going to describe to you certain rights that
17 you have under the Constitution and the laws of the United
18 States. You will be giving up these rights if you enter a plea
19 of guilty. Please listen very carefully, and if you do not
20 understand something, please stop me and, as I said before,
21 either I or your lawyer can describe it to you more fully or
22 you can consult in private with Mr. Goldman if you wish. All
23 right?

24 THE DEFENDANT: (In English) Yes, your Honor.

25 THE COURT: All right. Mr. Zulueta, under the

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1 Constitution and laws of the United States, you have a right to
2 a speedy and a public trial by a jury on the charges against
3 you.

4 (Audio interruption)

5 THE COURT: We're hearing background noise from
6 someone. Could everyone please mute their lines other than
7 Mr. Zulueta.

8 All right. Thank you.

9 I'm sorry, sir. Under the Constitution and laws of
10 the United States, you have a right to a speedy and a public
11 trial by a jury on the charges against you contained in the
12 information. Do you understand that?

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: Do you understand that you have a right to
15 plead not guilty and to continue to plead not guilty to the
16 charge?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: Do you understand that if there were a
19 trial, you would be presumed innocent and the government would
20 be required to prove you guilty by competent evidence and
21 beyond a reasonable doubt? Do you understand that?

22 THE DEFENDANT: (In English) Yes, your Honor. Yes,
23 your Honor.

24 THE COURT: You would not have to prove at trial that
25 you were innocent. Do you understand that?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: Do you understand that if there were a
3 trial, a jury made up of 12 people selected from this district,
4 the Southern District of New York, would have to unanimously
5 agree in order to find you guilty? Do you understand that?

6 THE DEFENDANT: (In English) Yes, your Honor.

7 THE COURT: And do you understand that if there were a
8 trial, you would have the right to be represented by an
9 attorney during that trial and at all other stages of the
10 proceeding, and if you could not afford one, an attorney would
11 be provided to you free of cost? Do you understand that?

12 THE DEFENDANT: (In English) Yes, your Honor.

13 THE COURT: And do you understand that if there were a
14 trial, you would have a right to see and to hear all of the
15 witnesses against you, your attorney could cross-examine them,
16 you would have the right to have your attorney object to the
17 government's evidence and to offer evidence on your behalf if
18 you so desired, you would have the right to have witnesses
19 required to come to court to testify in your defense, and you
20 would have the right to testify yourself, but you would not be
21 required to testify? Do you understand that?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Do you understand that if there were --
24 I'm sorry, sir?

25 THE DEFENDANT: (In English) Nothing.

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1 THE COURT: Do you understand that if there were a
2 trial and you decided not to testify, no adverse inference
3 could be drawn against you based on your decision not to
4 testify? And by that, I mean the jury would be instructed that
5 it cannot assume that you didn't testify because you were
6 guilty or because you're hiding something. Do you understand
7 that?

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: And do you understand that if you were
10 convicted at trial, you would have the right to appeal the jury
11 verdict?

12 THE DEFENDANT: (In English) Yes, your Honor.

13 THE COURT: Do you understand each and every one of
14 these rights, Mr. Zulueta?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: Do you have any questions about the rights
17 I've just outlined for you?

18 THE DEFENDANT: (In English) No, your Honor.

19 THE COURT: All right. Do you understand that by
20 entering a plea of guilty, you will be giving up each and every
21 one of these rights, you'll be waiving these rights?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: And do you also understand that you'll be
24 waiving any possible claim that your constitutional rights may
25 have been violated and you will have no trial?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: Do you understand that? And do you
3 understand that by entering a plea of guilty, you will also
4 have to give up your right not to incriminate yourself because
5 in a few moments I will ask you questions about what you did in
6 order to satisfy myself that you are guilty as charged and you
7 will have to admit and acknowledge your guilt? Do you
8 understand that?

9 THE DEFENDANT: (In English) Yes, your Honor.

10 THE COURT: Do you understand that you can change your
11 mind right now and refuse to enter a plea of guilty?

12 THE DEFENDANT: (In English) Yes, your Honor.

13 THE COURT: Do you understand you do not have to enter
14 this plea if for any reason you do not want to do so? Do you
15 understand that?

16 THE DEFENDANT: (In English) Yes, your Honor.

17 THE COURT: All right. Mr. Zulueta, you're charged in
18 Count One of the superseding information with drug misbranding
19 and adulteration, in violation of 21 United States Code
20 Section 331 and 333(a)(2).

21 Ms. Mortazavi, would you please state the elements of
22 the offense with which Mr. Zulueta has been charged in Count
23 One of the information.

24 MS. MORTAZAVI: Certainly, your Honor.

25 If this case were to proceed to trial, the government

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1 would have to prove the following elements beyond a reasonable
2 doubt:

3 First, that the defendant adulterated or misbranded a
4 drug in at least one way, or caused another to do the same;

5 Second, that the drug was in interstate commerce or
6 was introduced into interstate commerce; and

7 Third, that the defendant had the intent to defraud or
8 mislead.

9 And finally, the government would have to prove venue
10 by a preponderance of the evidence.

11 THE COURT: Thank you.

12 Mr. Zulueta, do you understand that if you were to go
13 to trial, the government would have to prove each and every
14 part or element of the charge against you that Ms. Mortazavi
15 has just laid out, and she'd have to prove that beyond a
16 reasonable doubt at trial if you did not plead guilty? Do you
17 understand that?

18 THE DEFENDANT: (In English) Yes, your Honor.

19 THE COURT: Do you understand the matters the
20 government would have to prove if you did not plead guilty?

21 THE DEFENDANT: (In English) Yes, your Honor.

22 THE COURT: All right. Mr. Zulueta, I want to talk to
23 you about the consequences of entering the plea you've told me
24 you wish to enter.

25 Do you understand that the maximum possible term of

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1 imprisonment for the offense in Count One to which you tell me
2 you wish to plead guilty is a term of imprisonment of three
3 years?

4 THE DEFENDANT: (In English) Yes, your Honor.

5 THE COURT: And do you understand that Count One can
6 also include a term of supervised release, the maximum term of
7 which is one year?

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: And do you understand that in addition to
10 these restrictions on your liberty, the maximum possible
11 punishment for Count One also includes certain financial
12 penalties? Do you understand that?

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: And do you understand that the maximum
15 fine allowed under the statute is \$10,000 or twice the gross
16 pecuniary gain relating to the charge or the offense or twice
17 the loss to persons other than yourself as a result of the
18 offense, whichever is greater? Do you understand that?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: And do you understand that there is also a
21 mandatory \$100 special assessment for each count?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Do you understand that the superseding
24 information also contains forfeiture allegations and as part of
25 your sentence, you will be required to forfeit to the United

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1 States any and all drugs that were adulterated or misbranded as
2 part of the crime to which you are intending to plead guilty,
3 or a sum of money representing the value of such property? Do
4 you understand that?

5 THE DEFENDANT: (In English) Yes, your Honor.

6 THE COURT: All right. Let me pause for a moment and
7 ask Ms. Mortazavi and Mr. Goldman, is there a preliminary
8 consent order of forfeiture?

9 MS. MORTAZAVI: There is, your Honor.

10 THE COURT: All right. And has it been provided to
11 the Court?

12 MS. MORTAZAVI: I understood that it had been. If it
13 has not, your Honor, I apologize, and we can provide a copy.
14 The amount is laid out in the plea agreement --

15 THE COURT: Yes.

16 MS. MORTAZAVI: -- and it would mirror that.

17 THE COURT: Yes. So we'll talk about the amount in a
18 moment.

19 But Mr. Goldman, do you have a copy of that order?

20 Not right now. Have you received a copy of the
21 proposed consent order?

22 MR. GOLDMAN: Oh, yes. Yes, your Honor.

23 THE COURT: And did you review it with Mr. Zulueta?

24 MR. GOLDMAN: Yes, your Honor.

25 THE COURT: And in fact, is there consent to the

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1 proposed forfeiture order?

2 MR. GOLDMAN: There is, your Honor.

3 THE COURT: Okay. All right. So the parties will
4 please provide that to the Court after today's proceeding, and
5 we'll get that entered as part of the record.

6 All right. Mr. Zulueta, I now want to talk to you a
7 bit about the supervised release aspect of any potential
8 penalty for the charge to which you intend to plead guilty, and
9 I want to make sure that you understand what supervised release
10 is.

11 Supervised release means that you would be subject to
12 monitoring when you are released from any prison term that's
13 imposed. During that period of supervised release, certain
14 terms and conditions would be imposed, and if you violate any
15 of those set terms and conditions, you can be reimprisoned
16 without a jury trial. Do you understand that?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: And do you understand that if you were on
19 supervised release and do not comply with any of the set terms
20 and conditions, you can be returned to prison for up to one
21 year, and you will be given no credit for any time you spent in
22 prison as a result of your sentence or any time that you had
23 spent on supervised release prior to the violation? Do you
24 understand that?

25 THE DEFENDANT: (In English) Yes, your Honor.

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1 THE COURT: You should also understand, Mr. Zulueta,
2 that there is no parole in the federal system. If you are
3 sentenced to prison, you will not be released early on parole,
4 although there is a limited opportunity to earn credit for good
5 behavior, but you would have to serve at least 85 percent of
6 the time to which you were sentenced. Do you understand that?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: Do you further understand that if I accept
9 your guilty plea and adjudge you guilty, that adjudication may
10 deprive you of certain valuable civil rights, such as the right
11 to vote, the right to hold public office, the right to serve on
12 a jury, and the right to possess any kind of firearm, if you
13 currently have or could otherwise attain these rights? Do you
14 understand that?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: All right. And do you understand, sir,
17 that if it turns out -- you've told me that you are a United
18 States citizen. Do you understand that if you are not and that
19 in any event, as a result of your plea, if I accept that plea
20 and adjudge you guilty, there could be adverse effects on your
21 immigration status, including, if it turns out you're not a
22 citizen, further detention following completion of your
23 sentence and/or removal or deportation from the United States?
24 Did you discuss your immigration status with Mr. Goldman and
25 any possible immigration consequences of your plea?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: And are you satisfied with the advice that
3 you've received in that regard?

4 THE DEFENDANT: (In English) Yes, your Honor.

5 THE COURT: All right. Mr. Zulueta, do you understand
6 that under the current law, there are sentencing guidelines
7 that judges must consider in determining your sentence?

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: And have you spoken with Mr. Goldman about
10 the sentencing guidelines?

11 THE DEFENDANT: (In English) Yes, your Honor.

12 THE COURT: And do you understand that in addition to
13 the sentencing guidelines, in imposing a sentence, I must
14 consider various additional factors that are contained in a
15 statute, 18 United States Code Section 3553(a)? Do you
16 understand that?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: Has Mr. Goldman discussed those 3553(a)
19 factors with you?

20 THE DEFENDANT: (In English) Yes, your Honor.

21 THE COURT: All right. And do you understand that the
22 Court has discretion, while taking the guidelines into account,
23 to sentence you to any period of imprisonment up to three years
24 if you plead guilty to the charge in the superseding
25 information?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: Do you understand that even though the
3 plea agreement includes a stipulated or agreed sentencing
4 guidelines calculation, the Court will not be able to determine
5 your sentence until after a presentence report is completed by
6 the probation department and you and the government will each
7 have the chance to challenge any of the facts reported by the
8 probation office? Do you understand that?

9 THE DEFENDANT: (In English) Yes, your Honor.

10 THE COURT: All right. Now give me one moment.

11 All right. According to the plea agreement with which
12 I've been provided, you have agreed that the guidelines range
13 appropriate to the offense in Count One to which you are
14 pleading guilty is 30 to 37 months in prison and that the
15 applicable fine range for this case is \$10,000 to \$100,000. Is
16 that your understanding?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: All right. Do you understand that that
19 stipulation does not bind the Court or the probation department
20 as to the facts on which it is based, how to apply the
21 guidelines to the facts, or what will be an appropriate
22 sentence in your case? Do you understand that?

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: And do you understand that I may decide to
25 impose a sentence outside the guidelines range?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: Do you understand that if your lawyer or
3 anyone else has attempted to estimate or predict for you what
4 your sentence will be, that estimate or prediction could well
5 be wrong?

6 THE DEFENDANT: (In English) Yes, your Honor.

7 THE COURT: Do you understand that no one -- not your
8 attorney, not the government's attorney -- can nor should give
9 you any assurance about what your sentence will be since that
10 sentence cannot be determined until after the probation office
11 report is completed and I've ruled on any challenges to the
12 report and determined what the appropriate sentence is? Do you
13 understand that?

14 THE DEFENDANT: (In English) Yes, your Honor.

15 THE COURT: Do you also fully understand that even if
16 your sentence is different from what your attorney or anyone
17 else told you it might be, or if it's different from what you
18 expect or hope it might be, or if you're surprised or
19 disappointed by your sentence, if I accept your plea of guilty
20 today, you will be bound to your guilty plea and you will not
21 be allowed to withdraw your plea of guilty?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: (In English) Yes, your Honor.

25 THE COURT: Do you understand that even if the

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1 government does not oppose or take a position on what your
2 lawyer asks me to impose as your sentence, I am obligated to
3 impose whatever sentence I believe is appropriate under the
4 circumstances and the applicable law and you will have no right
5 to withdraw your plea of guilty after today? Do you understand
6 that?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: And do you understand that you may have
9 the right to appeal your sentence under certain circumstances,
10 even if your plea agreement provides that you're waiving your
11 right to appeal? Do you understand that?

12 THE DEFENDANT: (In English) Yes, your Honor.

13 THE COURT: All right. Mr. Zulueta, are you currently
14 serving any federal or state sentence?

15 THE DEFENDANT: (In English) No, your Honor.

16 THE COURT: Are you subject to prosecution for any
17 other crime aside from the one we're discussing today?

18 THE DEFENDANT: (In English) No, your Honor.

19 THE COURT: All right. As I say, I've been given a
20 copy of the plea agreement that we've marked as Exhibit 1. Do
21 you have a copy of that, Mr. Zulueta?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: All right. Would you please look at the
24 last page of this document, sir. Is that your signature on
25 page 6 --

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: -- below "Agreed and consented to"?

3 THE DEFENDANT: (In English) Yes, your Honor, yes.

4 THE COURT: All right. Did you discuss this document
5 with your lawyer before you signed it?

6 THE DEFENDANT: (In English) Yes, your Honor.

7 THE COURT: Did you read it carefully before you
8 signed it?

9 THE DEFENDANT: (In English) I read it, and I signed
10 it, your Honor.

11 THE COURT: And did you have a full opportunity to
12 obtain whatever advice you wished or ask any questions to
13 Mr. Goldman before you signed this document?

14 THE DEFENDANT: (In English) Yes, your Honor.

15 THE COURT: Did he explain to you all of its terms and
16 conditions?

17 THE DEFENDANT: (In English) Yes, your Honor.

18 THE COURT: And did you fully understand the agreement
19 before you signed it?

20 THE DEFENDANT: (In English) Yes, your Honor.

21 THE COURT: All right. Do you understand,
22 Mr. Zulueta, as part of this agreement, it provides that you
23 will forfeit \$47,525 to the United States, representing the
24 value of forfeitable property that you obtained as a result of
25 the offense to which you intend to plead guilty?

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1 THE DEFENDANT: (In English) Yes, your Honor.

2 THE COURT: And that is the amount that will be
3 reflected, Ms. Mortazavi, in the consent order, correct?

4 MS. MORTAZAVI: That's correct, your Honor.

5 THE COURT: And that's your understanding,
6 Mr. Zulueta, correct?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: All right. And do you understand that
9 your plea agreement provides on page 4 that you're giving up or
10 waiving your right to appeal or to litigate or to challenge
11 your sentence, under a statute called Title 28 United States
12 Code Section 2255 or 2241, if I sentence you within or below
13 the guidelines range set forth in the plea agreement? Do you
14 understand that?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: And do you understand that you're under no
17 obligation to waive your right to appeal or to litigate your
18 sentence?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: And do you understand that the plea
21 agreement further provides, on page 4, that you're waiving any
22 right to appeal or attack your conviction on the basis that the
23 government has not provided discovery material, exculpatory
24 material, except information establishing factual innocence, or
25 any material to impeach the government's witnesses against you?

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1 Do you understand that?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: Do you understand that you're under no
4 obligation to waive those rights?

5 THE DEFENDANT: (In English) Yes, your Honor.

6 THE COURT: Do you understand that you're waiving any
7 right to claim that your constitutional rights have been
8 violated?

9 THE DEFENDANT: (In English) Yes, your Honor.

10 THE COURT: All right. In that connection, I note,
11 Mr. Goldman, that Mr. Zulueta has I believe joined in motions
12 by some of the co-defendants, specifically Ms. Garcia, to
13 suppress certain evidence obtained from a wiretap. That motion
14 is docketed at ECF Entry No. 445 and 446. If the Court accepts
15 Mr. Zulueta's plea today, is it your intention to withdraw his
16 joinder in the motion to suppress evidence?

17 MR. GOLDMAN: It is, your Honor.

18 THE COURT: All right. Is that motion withdrawn at
19 this time?

20 MR. GOLDMAN: It is withdrawn, your Honor, and I've
21 discussed that with my client.

22 THE COURT: All right. Mr. Zulueta, do you understand
23 what I just was asking Mr. Goldman and in fact do you consent
24 to the withdrawal of your motion to suppress evidence?

25 THE DEFENDANT: (In English) Yes, your Honor.

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1 THE COURT: All right. Do you understand that your
2 agreement, the plea agreement that we've been talking about,
3 further provides on page 3 that you will not move for a
4 downward departure under the sentencing guidelines or seek any
5 adjustment under the guidelines that is not described in the
6 plea agreement, but you can make arguments for a lower sentence
7 under the general sentencing statute that I mentioned to you
8 earlier, Section 3553(a), that contains a number of factors for
9 my consideration? Do you understand that?

10 THE DEFENDANT: (In English) Yes, your Honor.

11 THE COURT: And do you understand you're under no
12 obligation to enter into any such agreement?

13 THE DEFENDANT: (In English) Yes, your Honor.

14 THE COURT: Do you understand that your plea agreement
15 provides on page 4 that you're waiving any challenge to your
16 guilty plea, conviction, or sentence based on any immigration
17 consequences of your plea, regardless of any advice that you
18 may have received regarding immigration consequences?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: Do you understand that you're under no
21 obligation to make this waiver?

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: Does this agreement, the plea agreement
24 we've been discussing, reflect accurately your complete and
25 total understanding of the entire agreement between the

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1 government, you, and your attorney?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: Is everything you understand about your
4 plea and sentence covered in this agreement?

5 THE DEFENDANT: (In English) Yes, your Honor.

6 THE COURT: Is there anything that's been left out?

7 THE DEFENDANT: (In English) No, your Honor.

8 THE COURT: Apart from what's contained in this plea
9 agreement, have any promises been made to you in order to get
10 you to plead guilty?

11 THE DEFENDANT: (In English) No, your Honor.

12 THE COURT: Have any threats been made to get you to
13 plead guilty?

14 THE DEFENDANT: (In English) No, your Honor.

15 THE COURT: Have you been coerced in any way to enter
16 into this plea agreement?

17 THE DEFENDANT: (In English) No, your Honor.

18 THE COURT: Are you doing so of your own free will?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: All right. Knowing all that we've just
21 discussed, Mr. Zulueta, do you still wish to plead guilty
22 pursuant to this plea agreement?

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: All right. Mr. Goldman, do you know of
25 any valid reason why your client would prevail at trial or why

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1 your client should not be permitted to plead guilty?

2 MR. GOLDMAN: No, your Honor.

3 THE COURT: All right. Mr. Zulueta, I told you
4 earlier that you would need to waive your right not to
5 incriminate yourself because I need you to tell me -- I need to
6 be satisfied that you are in fact guilty as charged, so at this
7 point I'd like you to please tell me in your own words what it
8 is that you did that makes you guilty of the crime to which
9 you're entering a plea of guilty. You need to tell me when you
10 did it, with whom you did it, where you did it, and what
11 exactly you did that makes you guilty of the charge in Count
12 One of misbranding and adulterating drugs.

13 THE DEFENDANT: (In English) I'm going to speak on my
14 word. I bought a medicine, misbranded, misbranded medicine,
15 from Ross Cohen.

16 THE COURT: From? I'm sorry?

17 THE DEFENDANT: (In English) I bought a misbranded
18 medication from Ross Cohen.

19 MR. GOLDMAN: Ross Cohen, a co-defendant, your Honor.

20 THE COURT: Oh, thank you.

21 All right. Go ahead, Mr. Zulueta. Thank you. I'm
22 sorry.

23 THE DEFENDANT: (In English) I give it --

24 (Reporter interrupted for clarification)

25 THE DEFENDANT: (In English) I give it to my horses to

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1 perform in training.

2 THE COURT: You gave it to your horses to perform in
3 training?

4 THE DEFENDANT: Yes, to perform in training. I can't
5 say exactly specific a day I give it, but I did it.

6 THE COURT: All right. What general time frame? If
7 you can't tell me the specific day, can you tell me generally
8 in what time frame did you do this?

9 THE DEFENDANT: (In English) I tried to give it like
10 at one time -- one time a month.

11 THE COURT: Starting when, generally?

12 THE DEFENDANT: (In English) Two thousand -- 2019,
13 when I met Ross Cohen.

14 THE COURT: 2019? I didn't hear the rest.

15 THE DEFENDANT: (In English) When I met -- when I met
16 Ross Cohen.

17 THE COURT: When you met Ross Cohen. Yes.

18 THE DEFENDANT: (In English) Yes.

19 THE COURT: And how long did you continue to do that?
20 You said once a month. For how long? Did you do that until
21 the time you were arrested?

22 THE DEFENDANT: (In English) Well, not at the time I'm
23 arrested because I realized that what I buy, it -- I don't see
24 my horses perform or get better. I don't see no result. So
25 no, the time I got arrested, like at the last two or three

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1 months before I got arrested, I don't use it anymore.

2 THE COURT: All right. The information says that from
3 in at least 2019 through at least in and around March of 2020.
4 Is that accurate?

5 THE DEFENDANT: (In English) That's correct, your
6 Honor. That's correct.

7 THE COURT: All right. And you say that you didn't
8 see results in your horses, but you intended for these drugs to
9 cause your horses to perform better, right?

10 THE DEFENDANT: (In English) Yes, your Honor. Yes,
11 your Honor. 100 percent, yes.

12 THE COURT: All right. And were you intending that
13 the use of these misbranded drugs could not be detected by drug
14 regulators or horse officials?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: So you were intending to deceive or
17 defraud the racing officials or the drug regulators, correct?

18 THE DEFENDANT: (In English) Yes, your Honor.

19 THE COURT: All right. And you said you gave these
20 drugs to your horses, right? Horses you were training?

21 THE DEFENDANT: (In English) Yes, your Honor.

22 THE COURT: Where did you do that?

23 THE DEFENDANT: (In English) Where?

24 MR. GOLDMAN: Where.

25 THE DEFENDANT: (In English) Where I got my horses, in

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1 the barn.

2 THE COURT: No, but where is your barn?

3 THE DEFENDANT: (In English) Philadelphia Park.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: (In English) Philadelphia Park.

6 THE COURT: Philadelphia Park?

7 THE DEFENDANT: (In English) Yes, yes, your Honor.

8 THE COURT: And you say you got these drugs from Ross
9 Cohen?

10 THE DEFENDANT: (In English) Yes, your Honor.

11 THE COURT: Where is he located? Where did you get
12 the drugs, physically, like what location?

13 THE DEFENDANT: (In English) He sent it to me. He
14 send it to me.

15 THE COURT: Okay. And where is he located?

16 THE DEFENDANT: (In English) In New York.

17 THE COURT: He's in New York. Okay. And so he sent
18 them from New York to you in Philadelphia.

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: So in other words, the drugs traveled in
21 interstate commerce --

22 THE DEFENDANT: (In English) Yes, your Honor.

23 THE COURT: -- to get them to you.

24 THE DEFENDANT: (In English) Yes, your Honor.

25 THE COURT: All right. Mr. Zulueta, at the time you

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1 did what you've just described to me and what we've been
2 discussing, did you know that what you were doing was wrong and
3 illegal?

4 THE DEFENDANT: (In English) Yes, your Honor. Yeah,
5 I'm prepared to pay for the mistake I make.

6 THE COURT: All right. Ms. Mortazavi, is there
7 anything further factually that you wish me to address with
8 Mr. Zulueta in connection with his allocution?

9 MS. MORTAZAVI: Your Honor, I would just proffer that
10 Ross Cohen is not a veterinarian and that these drugs did not
11 appear to be either prescribed or FDA approved.

12 THE COURT: Mr. Zulueta, to your knowledge is what
13 Ms. Mortazavi has just represented accurate? You did not
14 understand Mr. Cohen to be a veterinarian, did you?

15 THE DEFENDANT: (In English) Yes, your Honor.

16 THE COURT: Yes, you did think he was a veterinarian,
17 or yes, that's correct, you knew he was not a veterinarian?

18 THE DEFENDANT: (In English) No, no, no, no, no, no,
19 he was not a veterinarian. Veterinarian.

20 THE COURT: He was not a veterinarian. All right.
21 And did you understand then that when you gave these drugs --
22 you told me the drugs were misbranded, right?

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: All right. When you gave these misbranded
25 drugs to your horses, you didn't have a prescription to do

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1 that?

2 THE DEFENDANT: (In English) Yes, your Honor.

3 THE COURT: Yes, that's correct, you mean, right?

4 THE DEFENDANT: (In English) No, no, no, no. I don't
5 have prescription. I'm sorry. I misunderstand.

6 THE COURT: Yes, you don't have a prescription and
7 yes, what I said is correct, right?

8 THE DEFENDANT: (In English) Yes.

9 THE COURT: All right. And did you yourself give the
10 drugs to the horses? You administered the drugs?

11 THE DEFENDANT: (In English) Yes, your Honor.

12 THE COURT: All right. Anything further,
13 Ms. Mortazavi?

14 THE DEFENDANT: (In English) Nothing further. Thank
15 you, your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Goldman, is there anything further that you
18 believe I should discuss with Mr. Zulueta in connection with
19 his allocution?

20 MR. GOLDMAN: No, your Honor.

21 THE COURT: All right. Ms. Mortazavi, would you
22 please summarize the evidence that the government would present
23 against Mr. Zulueta if the case were to go to trial.

24 MS. MORTAZAVI: Yes, your Honor.

25 If this case were to proceed to trial, we would

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1 introduce, among other pieces of evidence, intercepted phone
2 calls of Mr. Zulueta discussing with Jorge Navarro obtaining
3 and transferring performance-enhancing drugs, drugs that were
4 not approved by the FDA, not manufactured in registered
5 facilities, and not properly labeled, including a blood-builder
6 drug called "monkey" that was intended to have the same effect
7 as Epigen; these calls would also include discussions between
8 Mr. Zulueta and Mr. Navarro regarding methods for doping
9 horses, including drenching horses, and the effect of certain
10 performance-enhancing drugs on horses; it would also include
11 text messages retrieved from cellphone searches in which
12 Mr. Zulueta placed orders for performance-enhancing drugs to be
13 shipped interstate, as he himself indicated today, including
14 orders for the blood-builder drug called "monkey"; we would
15 have records of the races in which Mr. Zulueta entered horses,
16 records of those races and records reflecting his occupation
17 and licensure as a racehorse trainer; it would also include lay
18 and law enforcement testimony regarding certain of the drugs
19 that Mr. Zulueta discussed on these calls and in these text
20 messages, the fact that these drugs were not approved by the
21 FDA, that they were not labeled, that they were distributed
22 without valid prescriptions or any prescription at all; and
23 they would also include controlled purchases of some of the
24 drugs that Mr. Zulueta used and which the jury would be able to
25 inspect the bottles and determine for themselves the improper

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1 labeling.

2 THE COURT: All right. Thank you.

3 Mr. Zulueta, now that we've talked about your plea
4 agreement and the possible penalties of the crime to which
5 you're pleading guilty, we can turn to entry of a plea, if
6 you're prepared to do so. Are you, sir?

7 THE DEFENDANT: (In English) Yes, your Honor.

8 THE COURT: All right. So Mr. Zulueta, how do you
9 plead to Count One of the superseding information charging you
10 with drug misbranding and adulteration?

11 THE DEFENDANT: (In English) Guilty.

12 THE COURT: And that's drug misbranding and
13 adulteration with the intent to deceive or defraud, correct?

14 THE DEFENDANT: (In English) Yes, your Honor.

15 THE COURT: Your plea is guilty?

16 THE DEFENDANT: (In English) Yes, your Honor.

17 THE COURT: And are you pleading guilty because you
18 are in fact guilty?

19 THE DEFENDANT: (In English) Yes, your Honor.

20 THE COURT: Are you pleading guilty voluntarily?

21 THE DEFENDANT: (In English) Yes, your Honor.

22 THE COURT: You're doing so of your own free will?

23 THE DEFENDANT: (In English) Yes, your Honor.

24 THE COURT: And has anyone threatened you, coerced
25 you, made promises to you in order to induce you to plead

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1 guilty?

2 THE DEFENDANT: (In English) No, your Honor.

3 THE COURT: All right. Mr. Goldman, are there any
4 other questions that you believe I should ask Mr. Zulueta in
5 connection with his plea?

6 MR. GOLDMAN: No, your Honor.

7 THE COURT: All right. Ms. Mortazavi, any other
8 questions you believe I should ask in connection with
9 Mr. Zulueta's plea?

10 MS. MORTAZAVI: No, your Honor.

11 THE COURT: All right. Thank you.

12 Mr. Zulueta, you have acknowledged that you are in
13 fact guilty as charged in Count One of the superseding
14 information. Because I am satisfied that you know your rights,
15 including your right to go to trial, and you are waiving them
16 voluntarily, and you're aware of and understand the
17 consequences of your plea, including the sentence that may be
18 imposed, I find that your plea is entered knowingly and
19 voluntarily and is supported by an independent basis in fact
20 containing each of the essential elements of the offense. I
21 accept your plea of guilty and I enter a judgment of guilty on
22 Count One of the superseding information charging you with drug
23 adulteration and misbranding with intent to defraud or mislead.

24 Now, Mr. Zulueta, I now want to talk to you about the
25 process going forward. I mentioned to you earlier that the

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1 probation office needs to prepare a report, so that is the next
2 step in the process. The probation officers prepare that
3 report in order to assist me in determining what an appropriate
4 sentence will be. You need to be interviewed by the probation
5 office. I want to just remind you, it's very important that
6 the information you give to the probation office be truthful
7 and it be accurate. That report is very important to me in
8 deciding what your sentence will be.

9 Now when you're interviewed, you have a right to have
10 your lawyer present. You and your lawyer will have a right to
11 review the report when it's prepared in draft form. You'll
12 have an opportunity to discuss it, examine it, to challenge it,
13 to comment upon it, if you wish to do so, and then the
14 probation office will consider your comments, along with any
15 comments or objections by the government, and revise the report
16 if appropriate. You will have the right to challenge the final
17 version of that report when it's submitted to me, and before I
18 sentence you, you will have the right to speak on your own
19 behalf. Okay?

20 THE DEFENDANT: (In English) Yes, your Honor.

21 THE COURT: Now, Mr. Goldman, I assume that you wish
22 to be present at any interview of Mr. Zulueta; is that correct?

23 MR. GOLDMAN: That's correct, your Honor.

24 THE COURT: All right. Is there any reason why I
25 should not direct that a presentence report be prepared at this

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1 time? Ms. Mortazavi?

2 MR. GOLDMAN: No, your Honor.

3 THE COURT: Hold on, Mr. Goldman.

4 MS. MORTAZAVI: No, your Honor. No reason.

5 THE COURT: All right. Mr. Goldman?

6 MR. GOLDMAN: No, your Honor.

7 THE COURT: All right. And you've told me you do wish
8 to be present for the interview, right, sir?

9 MR. GOLDMAN: That's correct, your Honor.

10 THE COURT: All right. So I order that no interview
11 be conducted unless counsel is present.

12 I would ask you, Mr. Goldman, to please reach out to
13 the probation office and arrange for the interview to take
14 place in the next 14 days.

15 Ms. Mortazavi, I just remind you of the need to
16 provide to the probation office the statement of facts within
17 the next 14 days as well.

18 MS. MORTAZAVI: Yes, your Honor.

19 THE COURT: All right. And once the report is
20 generated in draft format, obviously, counsel, I just remind
21 you to timely give any comments or objections to the probation
22 office. Courtesy copies should be provided to chambers.

23 In terms of a date for sentencing, we are looking
24 roughly into February of 2022. Just one moment. We're
25 checking our calendar.

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1 10 a.m. on February 24. Does that work for people?

2 MR. GOLDMAN: Could I have one moment, your Honor?

3 THE COURT: Yes.

4 MR. GOLDMAN: I'd actually prefer -- give me a second.

5 I have to --

6 THE COURT: I just note for you all that that is
7 Presidents Week. I don't know if that impacts anybody's
8 availability.

9 MS. MORTAZAVI: That timing should be fine for the
10 government, your Honor.

11 THE COURT: Thank you.

12 MR. GOLDMAN: If I could just have a moment, your
13 Honor.

14 THE COURT: I can't hear you, Mr. Goldman.

15 MR. GOLDMAN: If I may just have a moment, your Honor.
16 I'm scrolling down.

17 THE COURT: Yes, of course. Yes.

18 MR. GOLDMAN: That would be great, your Honor.

19 THE COURT: All right. February 24th at 10 a.m.?

20 MR. GOLDMAN: Yes, your Honor.

21 THE COURT: All right. Then Mr. Zulueta, before we
22 conclude, I just remind you again that it's very important that
23 you be truthful with the probation office and cooperate in the
24 process of preparation of the report. Any failure to be
25 truthful with the probation office, or with the Court,

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1 obviously, could have an adverse effect on your sentence, and
2 it could also subject you to separate prosecution.
3 Specifically, the Court reserves the right to deny you the
4 2-level reduction in your sentencing guideline calculation for
5 acceptance of responsibility if you don't cooperate fully with
6 the probation office in connection with preparation of that
7 presentence report. All right? And then --

8 THE DEFENDANT: (In English) Yes, your Honor.

9 THE COURT: -- finally, Mr. Goldman, for the record,
10 well, you've already told me that you do withdraw the motion to
11 suppress, so the Court will deem it withdrawn at this point.

12 Is there anything further for the record, Mr. Goldman?

13 MR. GOLDMAN: No, your Honor. Thank you.

14 THE COURT: All right. Ms. Mortazavi?

15 MS. MORTAZAVI: Nothing further. Thank you, your
16 Honor.

17 THE COURT: Thank you. I thank our court reporter
18 very much as well, and I wish everyone a good rest of the day.

19 Mr. Zulueta, good luck to you, and as I said, please
20 cooperate fully with the probation office.

21 THE DEFENDANT: (In English) Thank you, your Honor.
22 Yes.

23 MR. GOLDMAN: Thank you, your Honor. Have a nice day.

24 THE COURT: Thank you. You as well.

25 MS. MORTAZAVI: Thank you, your Honor.

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